

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

HEIDY KIM, on behalf of herself and all others  
similarly situated,

Plaintiff,

Case No.: 19-CV-269 (BMC)

**STIPULATION OF  
VOLUNTARY  
DISMISSAL WITHOUT  
PREJUDICE**

-against-

SR HOMECARE OF NY, INC. a/k/a SR HOME  
CARE OF NY INC., EVERGREEN ADULT  
DAY CARE IN FLUSHING INC.,  
EVERGREEN ADULT DAY CARE IN NY  
INC., EVERGREEN ADULT DAYCARE  
CENTER INC., EVERGREEN FLUSHING  
NEW YORK LLC, ELIM HOME CARE  
AGENCY, LLC, JAMES KOO a/k/a BYUNGKI  
KOO, H J KOO a/k/a HYUNJONG KOO a/k/a  
TOMMY KOO, HELLEN KANG, SO MI SHIN,  
YANG YIM KANG, YANG SIL KANG a/k/a  
YOON HEE KANG, SUNG JUN SHIM, and  
HYE RAN KIM,

Defendants.

**IT IS HEREBY STIPULATED AND AGREED**, by the parties to this action, pursuant  
to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as follows:

**WHEREAS**, on January 14, 2019, Plaintiff Heidy Kim, on behalf of herself and all  
others similarly situated, commenced this action for unpaid overtime wages and other damages  
pursuant to the Fair Labor Standards Act, New York Labor Law, and other laws, rules, and  
regulations, and subsequently served process upon the Defendants; and

**WHEREAS**, this matter was assigned to the Hon. Brian M. Cogan, United States District  
Judge, who has made and issued various Orders in this matter; and

**WHEREAS**, on February 27, 2019, Plaintiff filed a First Amended Complaint, and on March 6, 2019, Defendants filed an Answer to the First Amended Complaint; and

**WHEREAS**, on March 12, 2019, Plaintiff filed a motion for conditional certification of this matter as a collective action, which motion is currently pending; and

**WHEREAS**, the parties have agreed to engage in voluntary mediation before a private mediator in order to attempt to resolve this dispute, and wish to engage in that process without simultaneously engaging in litigation of this matter; and

**WHEREAS**, the Court denied the parties' request to stay this matter pending the mediation, but suggested that the parties could agree to dismissal without prejudice and with tolling and snapback provisions, and it is the parties' intent that this stipulation reflect their agreement to the Court's suggestion; and

**WHEREAS**, the Court further indicated that if the parties require further involvement of the court in connection with the issues raised in Plaintiff's First Amended Complaint, Plaintiff could re-file this matter as a related case that would again come before Judge Cogan;

**NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:**

1. This matter is dismissed as against all parties, without prejudice;
2. The parties shall expeditiously and in good faith engage in efforts to resolve their disputes, on a class-wide basis, through private mediation;
3. Pending resolution of this matter through court-approved settlement or otherwise, all statutes of limitation applicable to the causes of action alleged in the Complaint shall be tolled from the date the Complaint was filed (i.e., January 14, 2019) as to Plaintiff and all putative class and collective action members;

4. If the mediation is unsuccessful in resolving the disputes between the parties, or if the parties agree upon the terms of a proposed settlement and require court approval, Plaintiff shall commence a new action in this court and shall designate that matter as a related case to this matter, such that the new matter will come before Hon. Brian M. Cogan, and Defendants will not object to such designation.

5. If Plaintiff commences a new action against the Defendants, as discussed in the proceeding paragraph, Plaintiff may serve process by sending a copy of the summonses and complaint via email to Andrew D. Grossman, Esq., Rha & Kim, LLP (email: [agrossman@rhakimlaw.com](mailto:agrossman@rhakimlaw.com)), with a copy, via email, to Jeffrey H. Ruzal, Esq. (email: [jruzal@ebglaw.com](mailto:jruzal@ebglaw.com)), and Defendants agree that Mr. Grossman is authorized to accept service of process on their behalf in that manner.

6. The parties agree that it is their intent, to the fullest extent possible, to preserve the status quo with respect to this matter while the mediation is pending, and therefore, should the mediation be unsuccessful and Plaintiff commences a new action, as discussed above, all Orders of the Court (other than the dates contained in the current case management order) and other matters between them with respect to this litigation shall return to the *status quo ante* (i.e. just prior to the filing of this Stipulation).

7. Defendants agree that they shall preserve and not destroy any documents (as that term is defined in Local Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York) and/or information concerning the allegations alleged in the First Amended Complaint.

8. Defendants agree not to take any adverse actions against any current or former employee or independent contractor because of his or her actual or possible involvement or

cooperation with plaintiff or plaintiff's counsel in connection with this action or the proposed mediation.

9. The undersigned counsel represent and warrant that they have conferred with their respective clients (i.e., the Plaintiff and the Defendants in this matter) regarding the terms of this Stipulation, that those clients understand and agree to the terms herein and acknowledge that they are bound by the terms herein, and that those clients have authorized their undersigned attorneys to enter into this Stipulation on their behalf.

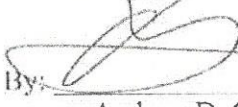
10. The terms of this Stipulation may not be modified or amended except in a writing signed by all parties or their duly authorized counsel.

Dated: New York, New York  
April 12, 2019


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